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The Rebirth of a Tax Deduction During a Global Crisis: Examining Three-Martini Lunch Tax Deduction

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THE REBIRTH OF A TAX DEDUCTION DURING A GLOBAL CRISIS: EXAMINING THREE-MARTINI LUNCH TAX DEDUCTION

Matthew P. Thies

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I. Introduction:

Throughout its scandalous history, the Three-Martini Lunch Tax Deduction (herein “TMLTD”) has found itself back in limelight once again by the enactment of the Consolidated Appropriations Act, 2021¹ (“CAA”). The CAA amended Internal Revenue Code § 274(n)², by temporarily raising the allowance of the deduction for business meals provided by a restaurant from 50% to 100% for the tax years of 2021 and 2022. This divergence from prior tax treatment of the business-meal deduction is directly related to the COVID-19 global pandemic. This global disaster has triggered numerous restaurant owners to close their doors after years of service and for those fortunate enough to stay afloat, to have to deal with state mandated occupancy limits

¹ See *CONSOLIDATED APPROPRIATIONS ACT, 2021*, PL 116-260, December 27, 2020, 134 Stat 1182

² I.R.C. § 274(n)

and protocols. With hopes to subsidize the restaurant industry, Congress brought the TMLTD back to life with all its baggage.

The TMLTD refers to the method in which a business deducts long, leisurely lunches and “writes it off” on their tax returns as a business expense.³ The deduction has been glorified in AMC’s series “*Mad Men*”, in which actor Jon Hamm portrays Don Draper, the head of advertisement for the fictional firm Sterling Cooper.⁴ Throughout the series, viewers are given a front-row seat to appreciate how businesses have abused TMLTD. In order to capture new business, Don Draper and his associates take potential clients on “business lunches and dinners” flooded with alcohol and entertainment to attract them into choosing Sterling Cooper as their advertisement firm. With the TMLTD in their arsenal, Sterling Cooper utilized its full potential and “wrote off” all expenses of the food and entertainment as a business expense. As dramatized as it was in AMC’s production, this practice was ubiquitous⁵ in many industries prior to the 1980s.

With its rebirth in the CAA⁶, the TMLTD has yet another opening to spread its wings and emerge from hibernation.⁷ However, many inquiries into policy considerations come to surface with this controversial exception added to § 274(n).⁸ Questions such as if the deduction is an adequate response to the global pandemic?⁹ In addition, does the juiced-up deduction help the

³See Probasco, Jim. “*Three-Martini Lunch Tax Deduction*” *Investopedia*, Investopedia, 30 Jan. 2021, www.investopedia.com/three-martini-lunch-tax-deduction-5093453#citation-5 (discussing the Three-Martini Lunch Tax Deduction and key takeaways).

⁴See “Don Draper - Jon Hamm: Mad Men Bios.” AMC, www.amc.com/shows/mad-men/cast/don-draper--48875.

⁵See Gleckman, Howard. “*Restoring the Three Martini Lunch Tax Deduction Won't Feed The COVID-19 Economy*.” Tax Policy Center, 7 May 2020, www.taxpolicycenter.org/taxvox/restoring-three-martini-lunch-tax-deduction-wont-feed-covid-19-economy (discussing the history of the Three-Martini Lunch Tax Deduction and its history of abuse).

⁶See *CONSOLIDATED APPROPRIATIONS ACT*, *supra* note 1.

⁷See “*Three-Martini Lunch Tax Deduction*,” *supra* note 3 (discussing the change the Three-Martini Lunch Tax Deduction has seen over the history).

⁸Any reference to § 274(n) is to I.R.C. § 274(n).

⁹See “*Restoring The Three Martini Lunch Tax Deduction Won't Feed The COVID-19 Economy*”, *supra* note 5 (explaining that the amendment to I.R.C. § 274(n) is pointless, as it benefits only a handful of restaurants); See also Marples, Donald J. “*Business Deductions for Entertainment and Meals*”, Congressional Research Service, 6 Apr.

restaurant industry in any meaningful manner, or does it largely benefit the big corporations into abusing its power? Finally, does the rebirth of the TMLTD potentially have unintended upside that could be explored in the future?

The key insight in this paper is exploring all of these questions and exposing that the 100% deduction for business-meals is not a sustainable tax policy considering the long history of abuse. However, this paper offers two solutions that potentially could receive bi-partisan support in the future regarding the percentage of the business-meal deduction. Further, this paper offers an alternative solution that can be implemented to help subsidize the entertainment and restaurant industry more efficiently.

This paper begins by exploring the history of the TMLTD. Part II examines how Congress has amended § 274¹⁰, by breaking down the legislation's history into three distinct themes. Here we see the dark history of TMLTD prior to the Tax Reform Act of 1986 and how Congress has tightened the leash overtime.

Part III explores the COVID-19 global pandemic effect on the restaurant industry and how shadiness of Capitol Hill provided for TMLTD to be partially reborn. Here we see how President Trump leveraged a stimulus and relief bill during a global pandemic to his benefit.

Part IV then looks at the current IRS treatment of § 274¹¹ after the CAA and provides a policy examination. Here we see how the CAA has changed the business-meal deduction for the tax years of 2021 and 2022. As well, this part brings to light why TMLTD has received backlash in the past.

2020, www.everycrsreport.com/files/20200406_IN11313_1deb8e3d3eeb4edbb287473cf9ddb3bc93c149.pdf (discussing the business entertainment and meal expense would be limited in the short term by current state restrictions of size of gatherings).

¹⁰ I.R.C. § 274.

¹¹ *Id.*

Part V explores three solutions that may be able to receive bi-partisan support on Capitol Hill and potentially subsidize an economic rebound from a global pandemic, while also reducing potential abuse. Although these solutions may not be able to avoid all corporate misuse, I fear that the COVID-19 global pandemic calls for Congress to propose innovative solutions to ensure that a cornerstone of our economy, the restaurant industry, is able to pick themselves off the floor after the dust settles.

II. **The Ebbs and Flows of the Three-Martini Lunch Tax Deduction:**

The history of the TMLTD is littered with criticisms and controversy that has reconfigured its tax treatment into what its complex features show today. In addition, TMLTD has had its morality questioned and has had to adapt to acceptable social norms throughout each decade.¹² In this part, I will breakdown each significant change in the tax treatment of the deduction and have given it a central theme.

Before the Tax Reform Act of 1986, when TMLTD afforded businesses with the ability to fully deduct all meal and entertainment expenses, it was essentially the “Wild West.” After the passing of Tax Reform Act of 1986, Congress altered the tax policy by lowering the deduction of all business meals and entertainment from 100% to 80%. With this shift in its tax treatment after the tax year of 1986, Congress showed its ability to utilize a lesson from its judicial branch and implement a policy that was similar to “Rational Basis Review with Bite.”

Finally, with the passing of the Tax Cuts and Jobs Act (“TCJA”) in 2017, Congress had finally reached its ceiling and would no longer tolerate the abuse from businesses by using TMLTD. This “Changing of the Guard,” established new requirements and additional oversight

¹² See Thorndike, Joseph. “A Cultural Tax History of The Three-Martini Lunch.” Forbes, Forbes Magazine, 21 Jan. 2021, www.forbes.com/sites/taxnotes/2021/01/21/a-cultural-tax-history-of-the-three-martini-lunch/?sh=4ac0b1dee3f0 (discussing how social norms of each decade displaced the public image of the Three-Martini Lunch Tax Deduction).

of the tax deduction. It included a major adjustment to I.R.C. § 274, by eliminating any deduction for entertainment expenses. In addition, the regulation scaled back the deduction for business meals from 80% to 50%, with enhanced requirements as a deterrence from misuse.

a. *The Wild West: Pre-1986*

Prior to Tax Reform Act of 1986, businesses had free reign and unlimited discretion to deduct any business meal or entertainment expense. The deduction was utilized in a way, almost exclusively by men¹³, for businessmen to enjoy an alcoholic lunch with the benefit of not having to endure any expense. Further, the deduction equipped businessmen with the tools they needed to take personal advantage of its lax policy by not only deducting lavish lunches but also to deduct rounds of golf, vacations disguised as business trips, and tickets to sporting events or concerts.¹⁴ As Joseph Thorndike stated, “the deduction was permitted not by legislative design but as an element of *ordinary and necessary* business outlays.”¹⁵

The 100% deductibility of those expenses under tax policies of that time, assisted businessmen to turn business events and meetings into college fraternity gatherings. To provide enhanced illustration of the fraternity culture being created by the full deductibility of these expenses, turn no further than AMCs production of “*Mad Men*.”¹⁶ With the series taking place in 1960s New York City, Don Draper (Portrayed by Jon Hamm) epitomizes what the TMLTD was all about. We would see him, and fellow colleagues take potential and current clients out to the most prestigious restaurants New York City had to offer. Additionally, Draper spared no expense to make a sale and would cater to anything the client desired. If that included the most expensive

¹³ See “A Cultural Tax History of the Three-Martini Lunch”, *supra* note 12 (discussing how in 1954, the use of Three-Martini Lunch Tax Deduction was a male dominate experience in the business industry).

¹⁴ See Probasco, Jim. “Three-Martini Lunch Tax Deduction” *supra* note 3.

¹⁵ See “A Cultural Tax History of the Three-Martini Lunch”, *supra* note 12 (emphasis added); (ordinary and necessary expense referring to I.R.C. §162(a)).

¹⁶ See “Don Draper – Jon Hamm: Mad Men Bios”, *supra* note 4.

bottle of scotch, a trip to the best show, or a vacation to Paris, Draper wouldn't hesitate and use the company credit card with full knowledge that it would be deductible as a "cost of doing business."

As time wore on, so did political figure's appetite for allowing such unregulated behavior.¹⁷ In 1961, President John F. Kennedy decided to push lawmakers to eliminate the tax deduction for business entertainment and meals.¹⁸ JFK found that the misuse by businessmen had gone too far and that it was a "moral failure as well as a fiscal one."¹⁹ Further, the President was tired of businesses and individuals deducting too many personal expenditures and leaving the federal government to foot the bill.²⁰

From 1961 until 1986, the deductions continued without any push back from Congress. With the passing of the Tax Reform Act of 1986, Congress was finally tired of paying for businesses' good times and decided to adhere to the concerns of the former President.

b. *Rational Basis Review with Bite: Tax Reform Act of 1986*

In 1986 Congress passed the Tax Reform Act of 1986²¹ ("Reform Act"), which marked a major shift in taxation law. This development gave Congress the platform to implement a complete overhaul in the way businesses used TMLTD²² and other tax rules. The alterations that Congress implemented through the Reform Act is analogous to the way the United States Supreme Court started to use the constitutional standard of Rational Basis Review with Bite by creating a higher level of scrutiny to its predecessor.

¹⁷ See "A Cultural Tax History of the Three-Martini Lunch", *supra* note 12

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ See Tax Reform Act of 1986, 99 P.L. 514, 100 Stat. 2085 (1986).

²² See "Three-Martini Lunch Tax Deduction", *supra* note 3 (discussing how the Tax Reform Act of 1986 added new requirements for a business to meet in order to deduct for business-meals).

The business-meal and entertainment deduction, that businesses came to love and later abuse, was given a much-needed kick in the rear-end. First, the Reform Act flushed away the general deductibility of entertainment expenses.²³ However, Congress allowed certain entertainment deductions, if the business could meet the narrow requirement. This requirement would permit a business to deduct up to 50% of the entertainment expense if the activity was “directly related”²⁴ to or associated with²⁵ the active conduct of the taxpayer’s trade or business.”²⁶ This requirement was added to I.R.C. § 274 to ensure that the entertainment expenditure had a “business nexus”²⁷ and granted the IRS with better tools to regulate potential misuse by businesses.²⁸ In addition to meeting the directly related and associated test, businesses had to provide the IRS with documentation or other evidence to establish the deductibility of the entertainment expense under I.R.C. § 274(d).²⁹

Now turning to the Reform Act’s limitations on the business-meal deductions, Congress downgraded the deductibility of such an expense from 100% to 80%, provided the business is

²³ See “Business Deductions for Entertainment and Meals”, *supra* note 9.

²⁴ See Schmalbeck, Richard, and Jay A. Soled. “Elimination of the Deduction for Business Entertainment Expenses.” Tax Notes, Shelf Project, 11 May 2009, scholarship.law.duke.edu/cgi/viewcontent.cgi?article=2733&context=faculty_scholarship (discussing that in order for a business to satisfy the directly related test, the taxpaying business must meet four conditions. The first condition being that the business must show that the event provided the business with a realistic expectation of making a future profit for the expenditure. The second condition being that the event must actually include a business meeting, negotiations, discussion, or other bona fide business transaction with the purpose of obtaining new business or income. The third condition being, in the totality of the circumstances, the main purpose of the activity was for business and not for the entertainment or event being attended. Finally, the event must be attended by associates from either business without nonbusiness guests.).

²⁵ *Id.* (explaining that a business must satisfy two conditions to meet the associated test. The first condition being that entertainment expenditure was primarily motivated by a business purpose. The second condition being that business deduction must be substantial and occur before and after the event.).

²⁶ *Id.* at page 758.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* (discussing that I.R.C. § 274(d) required businesses that passed the directly related test to provide the IRS with the time and place of the business event, the purpose of the meeting, and the business relationship between the participants. Further, I.R.C. § 274(d) required businesses that passed the associated test, the taxpaying business must additionally provide the IRS with time and place of the event and provide the business purpose of the discussion and relationship of the participants.).

able to meet certain requirements.³⁰ Prior to the tax year of 1987, businesses were not required to show that during the meal, the participants even discussed business.³¹ That was no longer an acceptable practice after the Reform Act.³² Further, businesses were mandated to subtract any portion of the meal that could be considered “lavish and extravagant.”³³ As one could reasonably conclude, it is in the eyes of the beholder, which left a crack in the door for businesses to sneak through and deduct the entire meal.

Through the enactment of the Reform Act, Congress struck its first blow at attempting to tighten the leash on the business-meal and entertainment deduction. By adding new requirements, substantially limiting the entertainment deduction from 100% to 50%³⁴, and dropping the business meal deduction from 100% to 80%³⁵, Congress created a higher level of scrutiny to I.R.C. § 274. However, Congress was not yet satisfied and thirty-one years later, it was provided with an opportunity to further reduce the allowable percentage of business meal and entertainment deduction. In a small subsection of the Tax Cuts and Jobs Act (“TCJA”) of 2017, Congress tightened its leash on business who decided to use I.R.C. § 274 to their benefit and leave the federal government with the bill.

c. *Changing of the Guard: Tax Cuts and Jobs Act (“TCJA”) of 2017*

To put it gently, Congress reached its limits on footing the bill and allowing businesses to use TMLTD through a subsection in the TCJA.³⁶ After nearly a half-century, legislatures

³⁰ See “*Three-Martini Lunch Tax Deduction*”, *supra* note 3.

³¹ *Id.*

³² *Id.* (discussing in order for the business to deduct 80% of the meal expense, the participants must discuss business)

³³ *Id.* (discussing that “lavish and extravagant was poorly defined, which created some discretion in the hands of the business to deduct the entire meal if in their belief it was not considered lavish nor extravagant).

³⁴ Subject to the directly related and associated test.

³⁵ Subject to the reduction of the meal expense for lavish and extravagant portions.

³⁶ See 115 P.L. 97, 131 Stat. 2054, 2017 Enacted H.R. 1, 115 Enacted H.R. 1, 115 P.L. 97, 131 Stat. 2054, 2017 Enacted H.R. 1, 115 Enacted H.R. 1 (2017).

delivered the knock-out blow to TMLTD, a punch similar in force to one the great Mike Tyson would bestow upon his opponents in his hay-day, leaving TMLTD's accessibility and enjoyment down for the count. In section 13304³⁷ of the TCJA, Congress used its pens as weapons and put a strangle hold on the once formidable deduction loophole.

Perhaps one of its most crowning achievement, the TCJA largely eliminated any deduction for a business expense that was related to an activity that can be considered to be entertainment, amusement, or recreation.³⁸ This revolution left businesses with no way in or out regarding deducting any entertainment expense. No exceptions, no tests, no requirements, no ifs ands or buts.³⁹ This response by Congress was a far cry from the Reform Act's handling of entertainment expense deductions from 50% with certain tests to meet, to 0%.⁴⁰ Further, Congress implemented an objective test to determine whether an activity constitutes entertainment, amusement, or recreation.⁴¹

But Congress didn't stop there. Through the enactment of the TCJA, Congress further limited the business-meal deduction by reducing it to 50%.⁴² Under the TCJA, businesses have the ability to deduct 50% of the cost of a business meal if two conditions are met.⁴³ These conditions limited the deduction of the meal to 50% if the taxpayer, or an employee of the

³⁷ *Id.*

³⁸ See *"Tax Cuts and Jobs Act: A Comparison for Businesses."* Internal Revenue Service, 21 Oct. 2020, www.irs.gov/newsroom/tax-cuts-and-jobs-act-a-comparison-for-businesses.

³⁹ *Id.* (differentiating between pre-2017 tax law regarding deduction for meals and entertainment expenses and post 2017 tax law).

⁴⁰ See 2018 IRB LEXIS 530, Notice 2018-76, 2018-42 I.R.B. 599 (I.R.S. October 3, 2018) (discussing that the TCJA repealed the directly related and business discussion exceptions to the prohibition on deducting entertainment expense and thereby making entertainment expenses no longer deductible).

⁴¹ *Id.* (discussing reg. sect. 1.274-2(b)(1)(ii), which used an objective test to broaden the definition of entertainment activities and if the activity fell into one of the definitions, then the activity would be considered entertainment and a nondeductible event).

⁴² See *"Tax Cuts and Jobs Act: A Comparison for Businesses"*, *supra* note 36.

⁴³ *Id.*

business, is present at the meal *and*⁴⁴ the food or beverages⁴⁵ at the meal are not considered lavish or extravagant.⁴⁶ Although this new rule can cause some confusion to an ordinary lay person, the IRS provided examples in Notice 2018-76.⁴⁷

In addition to limiting the business meal deduction to 50%, the TCJA made sure to clear up any ambiguity with regard to businesses deducting food or beverages while attending an entertainment event.⁴⁸ In such a circumstance, the TCJA mandates that food or beverages, whether purchased during or at an entertainment activity, must be purchased separately from the entertainment.⁴⁹ In addition, the cost of the food or beverage must be accounted separately from the entertainment and be traceable through receipts or invoices.⁵⁰

With its legislative power, Congress seized the opportunity to severely limit a business to use TMLTD and abuse it as it once did. By completely eliminating any deduction for an entertainment activity and broadening its definition to encompass a wide array of events, and reducing the business-meal deduction to 50%, Congress successfully completed its changing of the guard from a prior regime. However, as the clock struck mid-night and the calendar year

⁴⁴ Emphasis added.

⁴⁵ See Suttora, John, and Dennis St. Martin. “*Final Regs. Provide Guidance on TCJA Changes to Entertainment Deduction Rules.*” The Tax Adviser, 1 Feb. 2021, www.thetaxadviser.com/issues/2021/feb/guidance-tcja-changes-entertainment-deduction-rules.html (food and beverage means all food and beverage items, whether they are characterized as meals, snacks or other types of food and beverages. Further, food and beverage expense mean the full cost of food or beverage, including any delivery fees, tips, and sales tax).

⁴⁶ See “*Tax Cuts and Jobs Act: A Comparison for Businesses*”, *supra* note 38; But see 2018 IRB LEXIS 530, Notice 2018-76, 2018-42 I.R.B. 599 (I.R.S. October 3, 2018) (discussing that taxpayers may deduct 50% of an otherwise allowable business meal if; (1) the expense is an ordinary and necessary expense under I.R.C. § 162(a), (2) the expense is not lavish or extravagant, (3) the taxpayer is present at the furnishing of the food or beverage, (4) the meal is provided to a current or potential business customer or client, and (5) in the case of food or beverage during an entertainment activity, the food and beverage are purchased separately from the entertainment and are billed separately from the cost of the entertainment).

⁴⁷ *Supra* note 38.

⁴⁸ *Supra* note 36.

⁴⁹ *Id.*

⁵⁰ *Id.* (discussing if the purchase of the entertainment activity includes food or beverage, then a business cannot deduct any expense from that activity. For instance, if the tickets to the entertainment event include a luxury suit where the entertainment vendor provides food and beverages to its customers, it would be a nondeductible event).

changed to 2020, unforeseeable events led to a rebirth of TMLTD to relinquish its Wild West phase.

III. **COVID-19 & the Shadiness of Capitol Hill:**

In the year 2020, the world was struck by the COVID-19 pandemic. This global phenomenon, to date⁵¹, has taken the life of nearly 2.8 million people.⁵² In addition, the pandemic single-handedly crippled countries' economies and in effect caused legislatures throughout the world to enact spending bills to offset the side-effects. Because of its contagious air-borne qualities, COVID-19 caused many restaurants in the U.S. to close their doors in order to comply with government social distancing guidelines.⁵³ Due to those guidelines and state government closures, it is estimated that the entertainment and restaurant industry suffered billions of dollars in lost sales and saw substantial job loss.⁵⁴

However, the closures weren't baseless considering U.S. citizens made up approximately 25% of total positive COVID-19 cases worldwide.⁵⁵ With such an enormous percentage of positive cases coming from the U.S. and effect on the economy, Congress took action by enacting the Consolidated Appropriations Act, 2021 ("CAA").⁵⁶

The CAA provided a laundry list of government subsidies that delivered much needed assistance to households and businesses that were hit the hardest during the pandemic.⁵⁷ As discussed above, the entertainment and restaurant industry took a substantial hit and desperately

⁵¹ As of March 20, 2021.

⁵² See "Coronavirus Cases:" *Worldometer*, 20 Mar. 2021, www.worldometers.info/coronavirus/.

⁵³ See "Business Deductions for Entertainment and Meals", *supra* note 9.

⁵⁴ *Id.*

⁵⁵ *Id.* (30 million positive cases with COVID-19 in the US divided by the 122 million positive cases with COVID-19 worldwide)

⁵⁶ See 116 P.L. 260, 2020 Enacted H.R. 133, 116 Enacted H.R. 133, 134 Stat. 1182, 116 P.L. 260, 2020 Enacted H.R. 133, 116 Enacted H.R. 133, 134 Stat. 1182 (2020)

⁵⁷ See Gleckman, Howard. "The Pandemic Relief Bill's Good, Bad, and Ugly Tax Provisions." *Tax Policy Center*, 21 Dec. 2020, www.taxpolicycenter.org/taxvox/pandemic-relief-bills-good-bad-and-ugly-tax-provisions.

needed help.⁵⁸ However, even in the most trying of times, our political landscape has been susceptible to politicians seeking to take advantage of any opportunity.⁵⁹ Politicians pushing their own special interests into a proposed bill has been a common phenomenon throughout our history. Through the way the founding fathers created our bicameral legislative system, special interests have been used as ways to ensure that a proposed bill becomes law. Especially, with the political landscape of 2020, the CAA saw its handful of controversial policies snuck into its body.⁶⁰

Controversial is one way to describe former President Donald J. Trump. With his executive veto powers and political influence over the Republican Party, President Trump had the arsenal to pressure Congress to slip in a sweetener in the CAA.⁶¹ With his notorious business adventures prior to becoming president, Trump had been a landmark in the hospitality industry.⁶² After failing to win re-election in the 2020 general election, Trump seized this final opportunity to further his self-interest. Trump and his republican comrades in Congress⁶³, used their political leverage and back-room dealings, to stuff the CAA with certain tax policies.⁶⁴ One of those policies being the rebirth of the TMLTD.⁶⁵ With a global pandemic rocking the U.S. economy, the shadiness of Capitol Hill provided the opening for a partial rebirth of TMLTD.⁶⁶

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.* (discussing how the CAA incorporated many tax policies that were clearly not implemented for its pandemic relief qualities).

⁶¹ See “*Restoring the Three Martini Lunch Tax Deduction Won’t Feed the COVID-19 Economy*”, *supra* note 5.

⁶² *Id.*

⁶³ See Stein, Jeff. “*White House Secures 'Three Martini Lunch' Tax Deduction in Draft of Coronavirus Relief Package*.” *The Washington Post*, WP Company, 21 Dec. 2020, www.washingtonpost.com/us-policy/2020/12/20/meal-tax-deduction/ (discussing that the CAA’s passing language providing for the TMLTD was strongly denounced by congressional democrats).

⁶⁴ See “*Restoring the Three Martini Lunch Tax Deduction Won’t Feed the Covid-19 Economy*”, *supra* note 5.

⁶⁵ *Id.*

⁶⁶ Formerly known as I.R.C. § 274.

IV. TMLTD Rebirth & Policy Dissections:

In Division EE, Sec. 210⁶⁷ of the CAA, Congress inserted a provision to amend I.R.C. § 274.⁶⁸ This amendment provided TMLTD to be reborn and be utilized by businesses during the tax years of 2021 and 2022.⁶⁹ President Trump added that he advocated for its inclusion in CAA to incentive large corporations to spend money at restaurants and subsidize their comeback efforts.⁷⁰ With its reawakening, tax commentators and large accounting firms began to question its usefulness⁷¹ and dissect its policy considerations.⁷² Further, considering its checked history and the method in which it was reintroduced, it has opened itself up to all types of criticism and concern.

a. *TMLTD Current Tax Treatment & Tax Policy Examination:*

Through the amendment in the CAA, I.R.C. § 274(n) now allows a business to fully deduct the costs of food or beverages, so long as they are provided by a restaurant and the costs are paid or incurred during the calendar years of 2021 and 2022.⁷³ This change temporarily raises the deductibility of those expenses from TCJA's limit of 50% to 100%⁷⁴, effectively restoring TMLTD back to its Wild West phase. Further, the CAA did not provide clarification or guidance to taxpayers on the application of the amendment.⁷⁵ However, the amendment do not address the

⁶⁷ See “*Business Deductions for Entertainment and Meals*”, *supra* note 9.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See “*Three-Martini Lunch Tax Deduction*”, *supra* note 3.

⁷¹ See “*Restoring the Three Martini Lunch Tax Deduction Won’t Feed the COVID-19 Economy*”, *supra* note 5; see also Gordon, Marcy. “*Writing off More of That 3-Martini Lunch Is Causing a Stir.*” *AP NEWS*, Associated Press, 22 Dec. 2020, apnews.com/article/donald-trump-economy-coronavirus-pandemic-restaurants-4e4d09ee51a82f45a5fbdacd94fc9d92.

⁷² See “*KPMG Report: Full Deduction for Business Meals.*” *KPMG*, KPMG, 19 Jan. 2021, home.kpmg/us/en/home/insights/2021/01/tnf-kpmg-report-full-deduction-for-business-meals-provided-by-a-restaurant.html.

⁷³ See I.R.C. § 274(n)

⁷⁴ See “*Business Deductions for Entertainment and Meals*”, *supra* note 9.

⁷⁵ *Id.*

deductibility of entertainment expenses, which have been left untouched since being prohibited from deducting any costs from such activity by the TCJA.⁷⁶

In normal circumstances, there are guiding principles that are examined to determine if a good tax policy has been implemented.⁷⁷ Those guiding principles include equity and fairness, certainty, convenience of payment, economy of calculation, simplicity, neutrality, economic growth and efficiency, transparency and visibility, minimum tax gap, and appropriate government revenues.⁷⁸ However, 2020 cannot be classified as normal and the amendment to I.R.C. § 274 should be evaluated as a stimulative economic policy.⁷⁹

Being classified as a stimulative economic policy, a different set of criteria will be examined to determine whether the policy serves its purpose.⁸⁰ This different criterion scrutinizes the policy by inspecting its cost effectiveness and timeline.⁸¹ Since, this amendment allows for the deduction to be used for only a 2-year span, the tax years of 2021 and 2022, it is further considered to be a short-term stimulus policy.⁸² An effective short-term stimulus policy, hypothetically at its peak, maximizes an increase in its output and “employment per dollar of budgetary cost.”⁸³ In other words, to be effective the stimulus policy must have the attribute of being a “bang for the buck.”⁸⁴

⁷⁶ *Id.* (clarifying that entertainment expenses are still not a deductible event under the TCJA).

⁷⁷ See Fiore, Nick. “*Guiding Principles of Good Tax Policy*.” *Journal of Accountancy*, Journal of Accountancy, 1 Feb. 2002, www.journalofaccountancy.com/issues/2002/feb/guidingprinciplesofgoodtaxpolicy.html.

⁷⁸ *Id.*

⁷⁹ See “*Business Deductions for Entertainment and Meals*”, *supra* note 9.

⁸⁰ *Id.* at page 3

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.* (discussing that increased output and employment per dollar of budgetary costs is commonly referred to as the policy’s “bang for its buck”).

⁸⁴ *Id.*

Turning to the policy itself, its potential to increase output will be severely limited due to state government's limitations on the size of gatherings for indoor dining.⁸⁵ As of today⁸⁶, many states have continued to limit indoor dining to a maximum capacity of 50%.⁸⁷ Although in a minority of states, restaurants have been cleared to resume maximum capacity seating.⁸⁸ Additionally, with the continued rollout of COVID-19 vaccines⁸⁹, states will become more lenient with their capacity restrictions.⁹⁰ However, as state governments become more lenient, it is imperative for them to ensure the public safety and to avoid another mass spreading event.⁹¹ It is entirely reasonable that if another uptick were to occur because of the loosening of the indoor capacity restriction, states will begin enforcing a tighter capacity restrictions on restaurants. Taking the totality of circumstances, the potential of this tax policy to increase output continues to be hindered.⁹²

As well, one must examine the policy's end goal and whether it's process properly address its purpose. Here, the benefit of the stimulus tax policy would be indirectly felt by the entertainment and restaurant industry.⁹³ Rather, it is the businesses who will be directly benefited from the policy because they are the ones who may use the deduction.⁹⁴ Businesses who use the

⁸⁵ *Id.*

⁸⁶ March 20, 2021.

⁸⁷ See "Governor Murphy & Governor Cuomo Announce Indoor Dining in New Jersey and NYC Will Expand to 50 Percent Capacity Beginning March 19," *Office of the Governor*, Official Site of the State of New Jersey, www.nj.gov/governor/news/news/562021/approved/20210310a.shtml; see also Bunis, Dena, and Jenny Rough. "State by State Coronavirus-Related Restrictions in Every State." *AARP*, 19 Mar. 2021, www.aarp.org/politics-society/government-elections/info-2020/coronavirus-state-restrictions.html (discussing the breakdown of each state's COVID-19 restrictions and policies).

⁸⁸ *Id.*

⁸⁹ See "COVID-19 Vaccines." Centers for Disease Control and Prevention, www.cdc.gov/coronavirus/2019-ncov/vaccines/index.html (provides an updated list of total vaccine doses distributed and total doses administered).

⁹⁰ See "Governor Murphy & Governor Cuomo Announce Indoor Dining in New Jersey and NYC Will Expand to 50 Percent Capacity Beginning March 19", *supra* note 83 (quoting Governor Murphy of New Jersey, stating that as the state continues to ramp up the vaccination program, they feel confident in increasing indoor dining capacity).

⁹¹ *Id.* (quoting Governor Murphy of New Jersey, stating that New Jersey officials will continue to monitor the results from increasing the indoor dining capacity requirements and ensure the public is safe in doing so).

⁹² See "Business Deductions for Entertainment and Meals", *supra* note 9 at page 3.

⁹³ *Id.*

⁹⁴ *Id.*

policy strategically would be the beneficiaries of the change because they are given the discretion to use its power to build new business.⁹⁵

Further, the savings that the businesses would be entitled to from claiming the full deduction of the business meal, would not be felt until the business files its taxes at the end of the 2021 tax year.⁹⁶ Therefore, the policy change does very little for the immediate urgency.⁹⁷ From the economist's point of view, the amendment allowing for the full deductibility of a business meal provided by a restaurant, paid or incurred during the tax year of 2021 and 2022, cannot be classified as an effective stimulative economic policy.⁹⁸ It neither produces an increase in its output nor maximizes the employment per dollar of budgetary costs.⁹⁹

b. *Backlash and Public Perception:*

With a raging pandemic reigning down upon the U.S., its citizens and economy were in dire need of assistance from its law makers.¹⁰⁰ Congress answered the bell, by passing the \$900 billion pandemic relief package which was filed with numerous provisions.¹⁰¹ With one of its provisions being the amendment to I.R.C. § 274 and the revival of the TMLTD, the public began taking notice.¹⁰² Questions about its usefulness and impact towards subsidizing the restaurant industry came to the forefront.¹⁰³

⁹⁵ *Id.*

⁹⁶ *Id.* (discussing the realization event would take many months).

⁹⁷ *Id.* (discussing that the lag time of having to wait till the business files its taxes in 2021, would prohibit them from realizing any benefit for a while).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ See “*Writing off More of That 3-Martini Lunch Is Causing a Stir.*”, *supra* note 71.

¹⁰¹ *Id.* (discussing the \$900 billion-dollar pandemic relief coming in the form of the CAA. Additionally, the relief package was filed with a massive number of provisions that were put off to the side as the public focused on their stimulus checks).

¹⁰² *Id.*

¹⁰³ *Id.*; see also “*Restoring the Three Martini Lunch Tax Deduction Won’t Feed the COVID-19 Economy*”, *supra* note 5.

One of the harshest critics of the amendment, Howard Gleckman who is a Senior Expert at the Tax Policy Center¹⁰⁴, called the revival of the TMLTD “especially pointless.”¹⁰⁵ Gleckman backs up his argument by examining restaurant receipts in the last three years.¹⁰⁶ “According to the National Restaurant Association, US restaurant receipts grew from \$799 billion in 2017 (pre-TCJA) to \$833 billion in 2018 and to \$862 billion in 2019.”¹⁰⁷ Further, Gleckman points out that full-service restaurant’s revenues had a similar increase in those years.¹⁰⁸ With the data to support his argument that the rebirth of the TMLTD was nonmaterial to subsidize the restaurant industry in a global pandemic, Gleckman claimed that President Trump’s only goal was to reward business executives to “game the system.”¹⁰⁹

Other critics of the amendment found that the tax break would actually cost taxpayers \$6.3 billion in lost revenue in the upcoming years.¹¹⁰ Additionally, some found that the TMLTD revival doesn’t even address small restaurants, who are the ones in the most peril.¹¹¹ Even Republican tax experts have concurred that the policy is ineffective.¹¹² With nearly 2 million restaurant workers out of job¹¹³ and 17% of restaurants across the country closing their doors permanently¹¹⁴ because of the pandemic, Congress is in desperate need to establish a business

¹⁰⁴ See “Howard Gleckman,” *Tax Policy Center*, 15 June 2009, www.taxpolicycenter.org/author/howard-gleckman.

¹⁰⁵ See “Restoring the Three Martini Lunch Tax Deduction Won’t Feed the COVID-19 Economy”, *supra* note 5. (discussing that the business meal deduction has been a favorable tool for tax avoidance and dubious tax policy and restoring it during a pandemic is pointless).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* (full-service restaurants revenue grew from \$263 billion in 2017 to \$274 billion in 2018 and \$285 billion in 2019).

¹⁰⁹ *Id.* (discussing that restoring the tax break is meant to inhibit business executives to take advantages of its leniency and the most important thing that the government can do to revive the hospitality industry is to get the COVID-19 pandemic under control).

¹¹⁰ See “Writing off More of that 3-Martini Lunch is Causing a Stir”, *supra* note 70 (quoting Congress’ nonpartisan Joint Committee on Taxation stating that the new tax break will cost taxpayers \$6.3 billion in lost revenue).

¹¹¹ See “Three-Martini Lunch Tax Deduction”, *supra* note 3.

¹¹² See “Writing off More of that 3-Martini Lunch is Causing a Stir”, *supra* note 70.

¹¹³ *Id.* (discussing that more than 2 million restaurant workers have lost their jobs in the pandemic according to government data).

¹¹⁴ *Id.* (discussing that 110,000 restaurants, or 17%, have closed long-term or permanently according to the National Restaurant Association).

meal deduction that, on one hand, incentives businesses to utilize it, and on the other, help subsidize the recovery efforts of the restaurant industry for the upcoming years. While at the same time, creating a policy that will gather enough support from both sides of the aisle on Capitol Hill. Considering the complexities and steep-uphill challenge of creating an efficient tax policy surrounding I.R.C. § 274, I propose three different plans that may solve this jigsaw puzzle.

V. **Proposals:**

TMLTD, with its prior history of abuse and current reawakening, has become one of the most highly securitized tax policies in our tax code.¹¹⁵ Because of the COVID-19 pandemic, the CAA restored the fully deductibility of business meals in hopes of reviving the entertainment and restaurant industry.¹¹⁶ Criticism of this implementation questioned its usefulness and pointed to its alternative motive.¹¹⁷ However, some support of its policy has surfaced citing that the deduction may provide for gainful employment and reemployment for restaurant workers.¹¹⁸ This begs the question. Can Congress formulate a plan that provides for the TMLTD to find its place going forward, that subsidizes the affected industry and at the same avoid its side-effects? I propose two different tax approaches to I.R.C. § 274 that Congress can implement that may better serve the starving restaurant industry going forward. Further, I propose one solution that could avoid Congress' conundrum altogether.

¹¹⁵ See “*Three-Martini Lunch Tax Deduction*”, *supra* note 3 (analyzing that its tax treatment throughout its history has resulted in a hotly debated form of legislation).

¹¹⁶ *Id.*

¹¹⁷ See “*Writing off More of that 3-Martini Lunch is Causing a Stir*”, *supra* note 70

¹¹⁸ See “*Three-Martini Lunch Tax Deduction*”, *supra* note 3 (discussing that some “pros” of the revival of the tax deduction may help restaurants and bars to reopen as business increases and provide restaurants with the ability to hire employees with the increase in demand).

a. *Flat Deduction Rate of 75%:*

After the tax years of 2021 and 2022, Congress could permanently change I.R.C. § 274(n), to allow businesses to deduct 75% of the cost of a business meal that are provided by a restaurant. This permanent increase has the ability to cater a sustainable recovery effort in the restaurant industry going forward considering the time that it may take to recoup the past losses. Considering the devastating effects of the COVID-19 pandemic, it certainly calls for a policy that will continue beyond the two years that Congress provided for in the CAA. With the policies' permanent increase from 50% to 75%¹¹⁹, businesses will be encouraged to continually utilize its tax benefits and use restaurants as an alternative location for them to conduct meetings with current and potential clients.

Another positive effect of the permanent increase is that it potentially shields against business who seek to abuse its power, as they once did. As shown from its Wild West phase, a tax policy that allows for a 100% deduction rate for business meals, opens the door for substantial misuse and must be avoided. Additionally, the 75% permanent deduction rate should include provisions similar to TCJA's "lavish or extravagant" exceptions to its repertoire. The subtraction from the cost of the meal for "lavish and extravagant" expenditures is a useful provision in limiting the total cost that taxpayers bear and provides protective shield from businesses misusing its purpose.

A flat rate has a sound foundation in current tax treatment towards corporations and businesses. Through the passage of the TCJA, Congress removed the tax bracket system in regard to how corporations and businesses are taxed on profits.¹²⁰ The change in the corporate

¹¹⁹ After the two tax years that the CAA allows for the full deduction, it will revert back to the TCJA rate of 50%.

¹²⁰ See Kagan, Julia. "Corporate Tax." *Investopedia*, Investopedia, 6 Feb. 2021, www.investopedia.com/terms/c/corporatetax.asp.

tax resulted in a flat tax rate of 21% across many corporations.¹²¹ Additionally, a flat deduction rate has already been implemented in regard to the business meal deduction.¹²² It is clear from prior tax policies that Congress has approved a flat rate policy in the past and will likely approve one that is proposed as a solution.

With an increase to a flat deduction rate of 75%, the TMLTD can become an efficient tax policy that addresses the recovery of the restaurant industry for the upcoming years, while limiting its potential side-effects that has plagued it in the past.

b. Phase-Out & Deduction Tax Brackets:

If a deduction rate increase to a flat 75% post 2021 and 2022 is unwelcomed, Congress should create a bracket system that puts a limit on how much a certain business can deduct a business meal. This bracket system has the potential to silence the critics who claim that the TMLTD only benefits the lucrative corporations and their executives. As well, this bracket system should be implemented following a grace period for businesses to readjust their spending habits in order to comply with their placement.

To provide guidance for the drafters of the bracket system, they can use a similar system to the one employed regarding federal income tax. There, the bracket system imposes a higher income tax rate on the individual based on their yearly income.¹²³ Table 1 illustrates the 2020 Federal Income Tax bracket for an individual filer.¹²⁴

¹²¹ *Id.* (discussing that S corporations are unaffected by the flat tax because taxation is passed through to individuals).

¹²² See “*Three-Martini Lunch Tax Deduction*”, *supra* note 5 (discussing that through the enactment of the TCJA, the business meal deduction has a flat rate of 50%).

¹²³ See Orem, Tina. “2020-2021 Tax Brackets & Federal Income Tax Rates.” NerdWallet, 17 Mar. 2021, www.nerdwallet.com/article/taxes/federal-income-tax-brackets (the higher the income the individual brings home during the tax year, the higher the tax rate).

¹²⁴ *Id.* (see chart for single filers under 2020 federal income tax brackets)

Table 1:

<u>Rate</u>	<u>Taxable Income Bracket</u>	<u>Tax Owed</u>
10%	\$0 to \$9,875	10% of taxable income
12%	\$9,875 to \$40,125	\$987.50 plus 12% of the amount over \$9,875
22%	\$40,126 to \$85,525	\$4,617.50 plus 22% of the amount over \$40,125
24%	\$85,526 to \$163,300	\$14,605.50 plus 24% of the amount over \$85,525
32%	\$163,301 to \$207,350	\$33,271.50 plus 32% of the amount over \$163,300
35%	\$207,351 to \$518,400	\$47,367.50 plus 35% of the amount over \$207,350
37%	\$518,401 or more	\$156,235 plus 37% of the amount over \$518,400

Notes: Table 1 illustrates the tax liability for a Single Filer for purposes of Federal Income Tax. For Married couples who chose to file jointly or separately and Heads of Households, the tax liability varies depending on their respective income, by placing them in different tax brackets and applying similar tax rates as single filers.¹²⁵

For demonstration of how the tax bracket works, an individual who earns \$75,000 in adjusted gross income during the tax year, will fall into the 22% tax bracket and have a tax bill according to its specifications.¹²⁶ However, an individual who earns \$700,000 in income in the same year, will have a tax bill significantly higher than the former and will find themselves in the 37% tax bracket and pay accordingly.¹²⁷

This tax bracket system ensures that the higher income earning individual pays a higher rate than the individual who earns less. Additionally, the federal income tax bracket promotes

¹²⁵ *Id.* (see the different tax brackets for married couples who either file jointly or separately and heads of households).

¹²⁶ *Id.* (an individual who earns \$75,000 in income during the tax year will have to pay a 22% tax on that income plus \$4,617.50 on top, resulting in a federal tax bill of \$21,117.50).

¹²⁷ *Id.* (an individual who earns \$700,000 in income during the tax year will have to pay a 37% tax on that income plus \$156,235 on top, resulting in a federal tax bill of \$415,235).

one of the guiding principles of a good tax police by promoting equity and fairness.¹²⁸ A tax policy that properly promotes equity and fairness, is one that provides for similarly situated taxpayers to be subject to a tax bill that is congruent.¹²⁹ Additionally, a policy that sufficiently meets those said values, establishes horizontal and vertical equity.¹³⁰ Horizontal equity is satisfied when taxpayers with equal ability to pay, pay the same amount and vertical equity is fulfilled when taxpayers with enhanced abilities to pay, pay more in taxes.¹³¹

My proposal would be very similar to the individual federal income tax brackets. For instance, Congress can implement a deduction bracket that allows lower revenue businesses to have access to a higher deduction percentage for business meals. Hypothetically, for a business that earns revenue in the \$1,000,000.00 to \$20,000,000.00 range during the appropriate tax year would be allowed to deduct 90% of the cost of a business meal. Meanwhile, a business that earns \$100,000,000.00 or more in revenue during the appropriate tax year would simply be able to deduct 50% of the cost of business meals. This bracket system would promote equity and fairness comparable to the federal income tax. It would provide a business who earn less in a given tax year to a greater deduction rate and treat similarly situated revenue earning businesses alike. Further, the deduction bracket system used here, would comply with vertical equity by exposing those businesses with an enhanced ability to pay more in a taxes, to be subject to bill that properly resembles their financial situation and provide them with a lower deduction rate for business meals.

¹²⁸ See “*Guiding Principles of Good Tax Policy*”, *supra* note 77 (discussing the ten guiding principles that should be apparent in a good tax policy).

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

By silencing critics concerns, promoting fairness among similarly situated revenue generating businesses, and subjecting higher earning businesses to a lower deduction rate, this deduction bracket system could breathe new life into the use of the TMLTD. As the entertainment and restaurant industry will need all the help it can get to aide in its recovery from the COVID-19 pandemic, this policy is poised to bring a sustainable future policy that can flourish as these industries go forward.

c. *Giving Direct Grants to the Restaurants:*

With the COVID-19 pandemic still roaring its ugly head well into the year of 2021, Congress' options on how to directly address the starving entertainment and restaurant industry may need to resemble how they have addressed the individual stimulus payments. Through the CAA and other COVID-19 stimulus packages, Congress has provided individuals with three different Economic Impact Payments.¹³² Depending upon the classification of the taxpayer and one that has satisfied the eligibility requirements, an individuals has been entitled to receive up to \$3,200 from the federal government.¹³³ The purpose of these Economic Impact Payments is to stimulate consumer spending and provide additional income into the pockets of American citizens during the hard times of the COVID-19 pandemic.

My final proposal follows in similar fashion as the one that Congress has already taken through the Economic Impact Payments for taxpayers. Congress should provide restaurant owners with monetary grants that could potentially help them keep their doors open. However, these payments should come with certain requirements, just as the impact payments have. For

¹³² See Iacurci, Greg, "What to Know about Tax Credits in the AMERICAN Rescue Plan." 3 Apr. 2021, www.cnbc.com/2021/04/03/tax-credits-in-american-rescue-plan.html.

¹³³ *Id.* (discussing that if the taxpayer is a single filer and has made less than \$75,000 in reported income on their 2019 or 2020 taxes, then they have become eligible to receive the full \$3,200. Further, examining the different eligibility requirements that different types of taxpayers must satisfy in order to receive an Economic Impact Payment. For instance, an individual filer must have made lower than \$75,000 in adjusted gross income, while married couples, who have filed jointly, must have made less than \$150,000 in adjusted gross income).

instance, in order for a restaurant owner to be eligible to receive this grant, they must provide the federal government with proof that they have kept their doors open during the pandemic and have maintained a certain number of employees.

The second requirement may sound familiar to one who has knowledge of the Payroll Protection Program (“PPP”).¹³⁴ The PPP is a forgivable loan from the federal government for small businesses to help cover payroll costs, mortgage interest and other expenses.¹³⁵ However, in order to receive this loan, a business must maintain under 300 employees at the time of their application and certain other requirements.¹³⁶ Although the federal government has started its second round of loan applications and disbursements, the entertainment and restaurant industry may need an extra shot in the arm, as life as we knew it has drastically changed with respects to people’s comfortability with indoor dining.

For the upcoming years, the entertainment and restaurant industry may repeatedly see a drastic decrease in customers due to the fears of overcrowding and sitting in small areas with people outside their immediate family in a post-COVID world.¹³⁷ With this in mind, Congress can issue similar Economic Impact Payments to restaurant owners in order to provide them with extra income to continually pay employees and keep their doors open. Additionally, a plan similar to this has been proposed in Congress but has not yet found its way into any of the stimulus bills that have been issued thus far.¹³⁸

¹³⁴ See U.S. Small Business Administration, “*First Draw PPP Loan*”, www.sba.gov/funding-programs/loans/covid-19-relief-options/paycheck-protection-program/first-draw-ppp-loan.

¹³⁵ See Mercado, Darla. “*Firms That Took a PPP Loan under \$2 Million Are about to Get a Break.*” CNBC, 15 May 2020, www.cnbc.com/2020/05/14/firms-that-took-a-ppp-loan-under-2-million-are-about-to-get-a-break.html.

¹³⁶ *Id.*

¹³⁷ See “*Writing off More of That 3-Martini Lunch Is Causing a Stir*” *supra* note 71 (discussing that consumers may remain too afraid of the virus to go to a restaurant is an uncomfortable question).

¹³⁸ *Id.* (discussing that many advocates in the restaurant industry pushed for a \$120 billion fund to provide grants to independent restaurants passed the House of Representatives but did not find its way into the CAA or any other stimulus bill).

As a result of issuing grants directly to the affected industry, it would allow Congress to side-step TMLTD altogether. At the conclusion of the 2022 tax year, I.R.C. § 274(n) can make its return to its pre-pandemic deduction rate and avoid further skepticism. Thus, instead of dealing with critics questioning TMLTD's alternative motive and dubbing it an inefficient stimulative tax policy, Congress can attack the issue straight on by providing relief where it is needed the most.

VI. Conclusion:

Regardless of its turbulent history, the Three-Martini Lunch Tax Deduction has been reborn with the passing of the Consolidated Appropriations Act, 2021. With its purpose to help aide the recovery of the entertainment and restaurant industry from the COVID-19 pandemic, the resurgence of the fully deductible business meal has drawn serious concern. Questions of its usefulness as a stimulative tax policy and where the true benefits reside have surfaced.

However, because of the devastating effects of the global pandemic in 2020, the entertainment and restaurant industry need more help than allowing the TMLTD to be present for only two years. I propose two deduction policies to TMLTD that Congress could implement after the tax year of 2022, that will limit potential misuse by businesses, while still promoting its end goal of providing relief to these crucial industries. Finally, I propose an alternative approach to the issue of stimulating the highlighted industries, if implemented correctly, could avoid the chaos of TMLTD altogether and provide relief directly to those who have been harmed by no fault of their own.